GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0495		**Title:**	Revise law on malt beverages
Primary Sponsor:	Smith, Frank		**Status:**	As Introduced

- ☐ Significant Local Gov Impact
- ☑ Needs to be included in HB 2
- ☑ Technical Concerns
- ☐ Included in the Executive Budget
- ☐ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2007 Difference	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:					
General Fund	$7,083,333	$0	$0	$0	$0
Proprietary Fund	$0	$29,118,300	$39,406,766	$39,997,867	$40,597,836
Revenue:					
General Fund	$0	$22,532,045	$34,910,035	$35,621,185	$36,343,303
Proprietary Fund	$0	$29,118,300	$39,406,766	$39,997,867	$40,597,836
State Special Revenue- DPHHS	$0	$5,385,537	$7,288,426	$7,397,753	$7,508,719
Net Impact-General Fund Balance	($7,083,333)	$22,532,045	$34,910,035	$35,621,185	$36,343,303

Description of fiscal impact: This legislation requires all beer containing more than 4.5% alcohol by weight be treated as liquor. Therefore, beer with greater than 4.5% alcohol would be subject to the liquor excise tax and liquor license tax. This beer would also have to be distributed by the State of Montana, which requires significant expenditures for warehousing, distribution, and staffing.

FISCAL ANALYSIS

Assumptions:

1. This legislation requires all beer containing more than 4.5% alcohol by weight be treated as liquor, thus subjecting this beer to the liquor license tax and the liquor excise tax. Further, this beer would be distributed by the Department of Revenue. The effective date is not stated in this legislation; therefore the effective date is October 1, 2007. With this effective date, ¾ of beer over 4.5% alcohol content sold in FY 2008 will be affected by this legislation.
2. During FY 2006, the Department of Revenue collected beer tax on 942,134 barrels of beer. The Legislative Fiscal Division estimates that beer consumption will grow at 1.5% annually. Therefore, the

estimated barrels of beer sold in Montana will be 970,610 in FY 2008, 985,169 in FY 2009, 999,947 in FY 2010, and 1,014,946 in FY 2011.

3. Industry sources have indicated that approximately 50% of the beer sold in Montana is at or above the 4.5% alcohol content by weight.
4. The proposed legislation would require that these beer barrels will no longer be taxed as beer, but as liquor. Beer is taxed at a rate ranging from $4.30 per barrel to $1.30 per barrel based on the size of the brewer. Based on the distribution of beer by size of brewer in FY 2006, 95.85% of beer barrels are subject to the $4.30 rate, 0.75% are subject to the $3.30 rate, 0.62% are subject to the $2.30 rate, and 2.78% are subject to $1.30 rate. Therefore, the weighted average tax rate per barrel is $4.1965 ($4.30* 95.85% + $3.30* 0.75% + $2.30* 0.62% + $1.30* 2.78%).
5. The tax revenues under current law for beer with alcohol content of 4.5% and over is shown in the following table. The beer tax is distributed 23.26% to the Department of Public Health and Human Services (DPHHS) for alcohol treatment programs; the rest is deposited to the state general fund.

Beer Tax Collections and Distribution under Current Law for Beer with more than 4.5% alcohol

	FY 2008	FY 2009	FY 2010	FY 2011
Barrels > than 4.5% alcohol	363,979	492,585	499,973	507,473
Tax Collections (barrels x $4.1965)	**$1,527,437**	**$2,067,131**	**$2,098,138**	**$2,129,610**
DPHHS (23.26%)	$355,282	$480,815	$488,027	$495,347
General Fund (76.74%)	$1,172,155	$1,586,316	$1,610,111	$1,634,263

6. Under this bill, beer with over 4.5% alcohol content will be taxed as liquor. The liquor tax is a percent of the retail price of liquor. Industry sources indicate that a barrel of beer with alcohol content greater than 4.5% would sell at wholesale for approximately $200 per barrel. If this barrel of beer were sold and distributed by the Department of Revenue, like other liquors, there would be a 40% markup on the barrel, or $80 per barrel, for a retail price of $280 per barrel.
7. The liquor excise and license tax rates are dependent on the size of the producer. The liquor excise tax is 16% of the retail price of liquor for those producing more than 200,000 proof gallons of liquor and 13.8% of the retail price of liquor for those producing less than 200,000 proof gallons of liquor. For the purposes of this fiscal note, it is assumed that the beer will be subject to the 13.8% rate. The liquor excise tax is distributed 100% to the general fund.
8. The liquor license tax is 10% of the retail price of liquor for taxpayers producing more than 200,000 proof gallons, 8.6% for those producing 50,000 to 200,000 proof gallons, and 2% for those producing less than 50,000. For the purposes of this fiscal note, it is assumed that the beer will be subject to the 8.6% rate. Assuming that the beer will be subject to the 8.6% rate, the liquor license tax collected from the beer
9. The liquor license tax is distributed 34.5% into the state general fund and 65.5% to the DPHHS for alcohol treatment programs. The following table shows the collection and distribution of taxes on beer with more than 4.5% alcohol under SB 495.

Beer Tax Collections and Distribution under SB 495 for Beer with more than 4.5% alcohol

	FY 2008	FY 2009	FY 2010	FY 2011
Barrels > than 4.5% alcohol	$363,979	$492,585	$499,973	$507,473
x Retail Price	$280	$280	$280	$280
Total Retail Value	$101,914,050	$137,923,681	$139,992,536	$142,092,424
Liquor Excise Tax (value x 13.8%)	**$14,064,139**	**$19,033,468**	**$19,318,970**	**$19,608,755**
Liquor License Tax (value x 8.6%)	**$8,764,608**	**$11,861,437**	**$12,039,358**	**$12,219,948**
DPHHS (65.5%)	$5,740,818	$7,769,241	$7,885,780	$8,004,066
General Fund (34.5%)	$3,023,790	$4,092,196	$4,153,579	$4,215,882

10. There are revenue sharing agreements in place with tribal nations in Montana, and these agreements are based on the consumption of beer and liquor sold on reservations. The tribal share of the beer tax has averaged around 2% of the general fund distribution over the past years, and is assumed to stay at 2%. The revenue from the liquor excise tax dispersed to the tribes is projected to be 2.31%. SB 495 changes the amount of projected tribal revenue, and this is shown in the following table.

Beer Tax Revenue Sharing for Beer with more than 4.5% alcohol Current Law and SB 495

	FY 2008	FY 2009	FY 2010	FY 2011
Current Law				
Beer Tax General Fund	$1,172,155	$1,586,316	$1,610,111	$1,634,263
x Average Tribal Percent	2.00%	2.00%	2.00%	2.00%
Total Tribal Share	$23,443	$31,726	$32,202	$32,685
SB 495				
Liquor Excise Tax General Fund	$14,064,139	$19,033,468	$19,318,970	$19,608,755
x Average Tribal Percent	2.31%	2.31%	2.31%	2.31%
Total Tribal Share	$324,882	$439,673	$446,268	$452,962
Difference between SB 495 and Current Law	**$301,439**	**$407,947**	**$414,066**	**$420,277**

11. The revenue from the $80 per barrel markup is used by the Department of Revenue to pay administrative expenses of operating the liquor warehouse and liquor control, and then the remainder is distributed to the general fund. The liquor division of the Department of Revenue has requested $1,157,192 in HB 2 to operate the current liquor warehouse at a volume of approximately 600,000 cases of liquor, or about $1.928 dollars per case. This cost includes the costs of the 18 FTEs operating the warehouse.
12. This legislation would require the liquor division to handle beer with alcohol content over 4.5%. Each barrel of beer contains 13.79 cases of beer. The estimated number of cases of beer that would be handled by the liquor division under this legislation would be 5,019,267 in FY 2008 (363,979* 13.79), 6,792,741 in FY 2009 (492,585* 13.79), 6,894,632 in FY 2010 (499,973* 13.79), and 6,998,052 in FY 2011 (507,473* 13.79).
13. The estimated increase in annual operating costs of the liquor division due to this legislation would be $9,677,147 in FY 2008 (5,019,267 * $1.928), $13,096,405 in FY 2009 (6,792,741 * $1.928), $13,292,851 in FY 2010 (6,894,632 * $1.928), and $13,492,244 in FY 2011 (6,998,052 * $1.928).

14. The Department of Revenue's liquor division would also need to purchase or lease ten additional warehouses to house the increased beer volume. The current facility currently handles a volume of 600,000; the expected increase in case volume is approximately 6.6 million. Therefore, the Department would require 11 buildings total (6.6 million / 600,000), or an additional 10 buildings. The estimated amount of FTE's needed to operate these warehouses would be 180 FTEs (18 at the current warehouse * 10 new warehouses); these salaries are included in the operating costs. The annual lease costs for a 100,000 square foot warehouse at $12.50 per square foot (including utilities) is $1,250,000 per building. The annual lease costs for the 10 additional buildings is would be $12,500,000 per fiscal year for FY 2008 through FY 2011 (10 * $1,250,000). The Department would need to begin renting these buildings in FY 2007 so that the operations could be in place for the October 1, 2007 effective date. This fiscal note assumes that the Department will incur lease costs for two months of FY 2007 at $2,083,333 (2/12 * $1,250,000 * 10).
15. The start-up costs for each of these buildings would be approximately $500,000 including the costs of equipment, shelving, and other warehouse equipment. These facilities would need to be in place before the effective date. Therefore, $5,000,000 will be incurred in FY 2007 for the start-up costs of this legislation (10 * $500,000).
16. The expenses are taken out of the $80 markup on barrels of beer and the difference between the revenue and the expenses is transferred to the general fund. The following table shows the total expenses.

SB 495 Expenses

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Total DOR revenue from $80 markup	**$0**	**$29,118,300**	**$39,406,766**	**$39,997,867**	**$40,597,836**
Operating Costs	$0	$9,677,147	$13,096,405	$13,292,851	$13,492,244
Warehouses	$2,083,333	$12,500,000	$12,500,000	$12,500,000	$12,500,000
Startup Costs	$5,000,000	$0	$0	$0	$0
Total Costs	**$7,083,333**	**$22,177,147**	**$25,596,405**	**$25,792,851**	**$25,992,244**
General Fund	($7,083,333)	$6,941,153	$13,810,361	$14,205,016	$14,605,591

17. The net impact of this legislation to the general fund will be the sum of the expected revenues from the liquor excise tax, the expected revenues from the liquor license tax, and the net impact to the general fund from the 40% markup minus the administrative costs. The net impact of this legislation to the general fund is shown in the following table.

SB 495 Impact on the General Fund

Revenue Source	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Liquor Excise Gain		$13,739,257	$18,593,795	$18,872,702	$19,155,792
Liquor License Gain		$3,023,790	$4,092,196	$4,153,579	$4,215,882
$80 Markup	($7,083,333)	$6,941,153	$13,810,361	$14,205,016	$14,605,591
Beer Tax Loss		($1,172,155)	($1,586,316)	($1,610,111)	($1,634,263)
General Fund Impact	($7,083,333)	$22,532,045	$34,910,035	$35,621,185	$36,343,003

	FY 2007 Difference	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:					
FTE	0.00	180.00	180.00	180.00	180.00
Expenditures:					
Personal Services	$0	$6,880,451	$9,311,544	$9,451,217	$9,592,986
Operating Expenses	$2,083,333	$15,296,695	$16,284,861	$16,341,634	$16,399,259
Equipment	$5,000,000	$0	$0	$0	$0
Transfer to General Fund	$0	$6,941,153	$13,810,361	$14,205,016	$14,605,591
TOTAL Expenditures	$7,083,333	$29,118,300	$39,406,766	$39,997,867	$40,597,836
Funding of Expenditures:					
General Fund (01)	$7,083,333	$0	$0	$0	$0
Proprietary Fund (06)	$0	$29,118,300	$39,406,766	$39,997,867	$40,597,836
TOTAL Funding of Exp.	$7,083,333	$29,118,300	$39,406,766	$39,997,867	$40,597,836
Revenues:					
General Fund (01)	$0	$22,532,045	$34,910,035	$35,621,185	$36,343,303
State Special Revenue (02)	$0	$5,385,537	$7,288,426	$7,397,753	$7,508,719
Proprietary Fund (06)	$0	$29,118,300	$39,406,766	$39,997,867	$40,597,836
TOTAL Revenues	$0	$57,035,882	$81,605,227	$83,016,805	$84,449,858
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):					
General Fund (01)	($7,083,333)	$22,532,045	$34,910,035	$35,621,185	$36,343,303
State Special Revenue (02)	$0	$5,385,537	$7,288,426	$7,397,753	$7,508,719
Proprietary Fund (06)	$0	$0	$0	$0	$0

Technical Notes:

1. The effective date is October 1, 2007. However, it is unlikely that the Department of Revenue will be able to expand their liquor operations to handle the increased volume by this date.

Sponsor's Initials *Date* *Budget Director's Initials* *Date*